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Before the  
**Federal Communications Commission**  
 Washington, D.C. 20554

**AUG 5 4 03 PM '93**

**DISPATCHED BY** MM Docket No. 93-49  
 In the Matter of

Amendment of Section 73.202(b), RM-8193  
 Table of Allotments, RM-8344  
 FM Broadcast Stations.  
 (Los Lunas, Espanola and Pojoaque,  
 New Mexico)<sup>1</sup>

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: July 21, 1993; Released: August 5, 1993**

By the Chief, Allocations Branch:

1. At the request of Elliott McDowell ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 2102 (1993), proposing the substitution of Channel 273C for Channel 273C2 at Los Lunas, New Mexico, and the modification of Station KOYT's license to specify the higher class channel. To accommodate the upgrade at Los Lunas, the Commission also proposed that Channel 225C3 be substituted for Channel 272C3 at Espanola, New Mexico, and the license of Station KIOT be amended to specify the alternate Class C3 channel.<sup>2</sup> Petitioner filed comments reiterating its intention to apply for the channel, if allotted. Cheryl S. Potter ("Potter") filed comments and a counterproposal requesting the allotment of Channel 225C3 to Pojoaque, New Mexico, as the community's first local service, instead of the channel's use at Espanola.<sup>3</sup>

2. We believe the public interest would be served by substituting Channel 273C for Channel 273C2 at Los Lunas since it could enable Station KOYT to expand its coverage area and provide the community with a higher class wide coverage area service. We will also substitute Channel 225C3 for Channel 272C3 at Espanola. Channel 273C can be allotted to Los Lunas in compliance with the Commission's minimum distance separation requirements with a site restriction of 51.8 kilometers (32.2 miles) northeast to accommodate petitioner's desired transmitter site. Channel 225C3 can be allotted to Espanola with a site restriction of 16.2 kilometers (10.1 miles) northeast to avoid short-spacings to Stations KRWN, Channel 225C1, Farmington,

and KRST, Channel 222C and Kkob-FM, Albuquerque, New Mexico, and to accommodate petitioner's desired transmitter site.<sup>4</sup> As proposed, Station KOYT's license will be modified to specify operation on Channel 273C and Station KIOT's license will be modified to specify operation on Channel 225C3.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 20, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Espanola, New Mexico	225C3
Los Lunas, New Mexico	273C, 292C1

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the licenses of Elliott McDowell for Station KOYT, Los Lunas, New Mexico, IS MODIFIED to specify operation on Channel 273C, in lieu of presently authorized Channel 273C2, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Elliott McDowell for Station KIOT, Espanola, New Mexico, IS MODIFIED to specify operation on Channel 225C3 in lieu of Channel 272C3, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station KIOT's construction permit, BPH-910510IF, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

<sup>1</sup> The community of Pojoaque has been added to the caption.

<sup>2</sup> It was not necessary to issue an *Order to Show Cause* to the licensee of Station KIOT at Espanola since the petitioner is the licensee of the station.

<sup>3</sup> Public Notice of the filing of the counterproposal was given on May 25, 1993, Report No. 1942. However, on June 29, 1993, petitioner and Potter filed a "Joint Request for Approval of Agreement" whereby Potter has requested that her counterproposal be dismissed. In accordance with Section 1.420(j) of the

Commission's Rules, the petitioner has provided a copy of the agreement showing that Potter will not be reimbursed for more than the legitimate and prudent expenses incurred in filing the counterproposal. Therefore, we will dismiss Potter's counterproposal.

<sup>4</sup> The coordinates for Channel 273C at Los Lunas are North Latitude 35-12-42 and West Longitude 106-26-57. The coordinates for Channel 225C3 at Espanola are 36-04-41; 105-56-16.

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with construction permit BPH-910510IF, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Elliott McDowell, licensee of Stations KOYT, Los Lunas, New Mexico, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

7. IT IS FURTHER ORDERED, That the counterproposal of Cheryl S. Potter to allot Channel 225C3 to Pojoaque, New Mexico (RM-8344), IS DISMISSED.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau